

2003 UNEMPLOYMENT REMINDERS

***Educational Material Designed
for Monthly Distribution***

Prepared by:



*The Source to Streamline and
Manage Unemployment Costs*



2003 “UNEMPLOYMENT REMINDERS”

PROBATIONARY PERIOD

Getting to Know You

Determine as soon as possible whether a new employee meets job requirements. Prompt release of an unqualified or unsuitable probationary employee may eliminate or at least minimize unemployment benefit exposure. Risk may be further reduced by following procedures for warnings and documentation of rule violations/standards within the employee's control.

EMPLOYEE EVALUATIONS

Making the Grade

Periodic performance evaluations are generally used to document accomplishments and areas of needed improvement. Interim reminders and discussions of standards/expectations may help reduce misunderstandings leading to avoidable terminations. Consult with your Personnel Department for specific situations.

COMPANY RULES

Extra, Extra, Read All About It!

Each employee should be provided a handbook or list of company rules. Signed proof of receipt should be placed in the employee's personnel file. Posting rules may also be appropriate. If during orientation (or subsequent meetings) employees are reminded of rules - or given revised rules, employees should sign an attendance sheet.

ABSENCE REPORTING

Roll Call

Employees should be informed of notice requirements for tardiness or absences. As importantly, provide instructions on who to call (e.g., supervisor, office manager, personnel department) when late or absent. For reported illness, require medical documentation when appropriate.



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WARNINGS

Do The Right Thing

Warnings should be specific and signed by the employee. Should the employee refuse to sign, ask another management person to sign the document as a witness to its issuance. Always give a copy to the employee.

DISCIPLINARY SUSPENSION

Penalty Box

A disciplinary suspension should be confirmed in writing and should state the reason for the discipline, the length of suspension and definite return date. Consult with your Personnel Department on steps or procedures to be followed.

DISCHARGE FOR MISCONDUCT

The Point of No Return

Discharge for misconduct (a deliberate or willful violation of the employer's rules) usually occurs after warnings and counseling have failed. Singular violations, e.g., fighting, use of illegal drugs, theft, may warrant immediate discharge. Contact your Personnel Department to determine that approved procedures/policies are followed before taking action.

VOLUNTARY QUIT

Hello. I Must Be Going

Once a notice of quit is given, an employee should be permitted to work through the notice or paid through the notice date. (Discharging a claimant prematurely may otherwise qualify him for benefits.) Always request a resignation letter - except, of course, in the instance of a job abandonment.



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EXIT INTERVIEW

Last Call

Conducting exit interviews avoids surprises. Many times the reason for resignation remains unknown until the unemployment hearing or EEO complaint. Interviewing the departing employee may reveal real problems in the workplace which, if amended, might prevent a good employee from leaving and avoid potential problems or litigation.

STATE AGENCY CONTACT

Don't Call Me ... Call TALX UC eXpress

The State Agency may contact an employer by telephone or mail with a request for additional information. Information submitted to the state agency regarding an unemployment claim, either orally or in writing, should be directed to your UC eXpress Claims Team immediately. This will ensure that UC eXpress has all pertinent information on the claim.

LEAVE OF ABSENCE

I'll Be Back

Guidelines should be established for a leave of absence. The guidelines should include requirements that the employee sign a formal application which clearly specifies length of leave, reports required for medical leave, conditions of personal leave and reporting requirements. If an employee fails to report as requested or does not report when the leave expires, an effort should be made to document the reason. If no compelling reason exists, the separation will generally be viewed as a voluntary quit. The reason(s) for failing to return may also raise questions about availability or capability for employment.

2003 UNEMPLOYMENT TIPS

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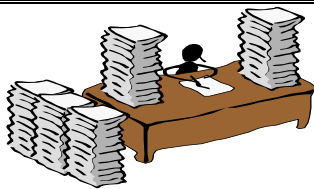
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**THE UNEMPLOYMENT CLAIMS PROCESS
IN BRIEF**

- Employee voluntarily or involuntarily separates from your company.
- Claimant files claim for benefits at the state unemployment office, providing his explanation for separation.
- State agency mails a claim form to *UC eXpress*/employer requesting employer's explanation for separation and, possibly, a response to claimant's statement.

☞ NOTE: Failure to respond in a timely manner may result in a penalty and/or loss of protest rights. Observe deadlines for replying. Call your UC eXpress Claims Team for advice.

- State agency issues determination based on information provided. Quits and discharges for cause will generally require an explanation/documentation.
- Employer or claimant may protest a determination by filing a timely appeal. Although some states may issue a redetermination (assuming new information), the usual remedy is an administrative hearing before a referee or administrative law judge.
- Hearings afford employers and claimants the right to give sworn testimony and offer witnesses/evidence on their behalf. Parties to a hearing are generally subject to examination and cross-examination.
- An employer or claimant may appeal a decision by a referee or administrative law judge. Usually, it is expected that the appellant explain the basis for appeal in a letter or statement referencing the record.
- Appeal Board or Board of Review issues decision on merits of appeal. The final administrative decision may be appealed to court.

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**REHIRES AND REPORTED WORK REFUSALS CAN
SAVE REAL DOLLARS**

By offering jobs to former employees claiming benefits, the employer may get a qualified worker while reducing unemployment benefit charge and tax exposure. Also, claimants may be determined ineligible for benefits because “suitable work” was refused without good cause. However, job refusals must be carefully documented.

Here are some suggestions that will help reduce your unemployment cost exposure:

- Offer work only to claimants eligible for rehire.
- Contact claimants directly or notify your local unemployment office if you have suitable work available. *UC eXpress* Claims Team will communicate with state agencies on your behalf.
- Document details of job offer, i.e., hours, pay, title, duties, date of offer and, if applicable, reason(s) for refusal. Failure to appear for an interview should also be documented since this action may constitute a refusal of employment if bona fide suitable work was available.
- Report rehires or documented job refusals to your *UC eXpress* Claims Team immediately. Your Claims Team will notify the state agency.

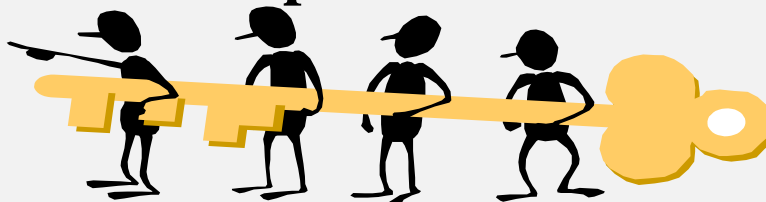
Job Offers under the following circumstances, however, will generally not subject a claimant to a disqualification:

- Outside usual occupation or field.
- Claimant not suited to work.
- Wages are substantially less than the prevailing wage for similar work in the locality.
- Working conditions are unsafe or hazardous.
- Relocation of worksite causes unreasonable hardship.
- Substantial change in work schedule if detrimental to employee.

☞ **NOTE:** *The state will not rule on a job refusal prior to a claim for benefits or during a week when no benefits are claimed.*

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Train & Develop.....It's Cost Effective!



In today's dynamic employment society, the "average" employee changes occupation seven (7) times. Learn why it may be financially advantageous to train and develop existing associates vs. continually hiring new ones.

TAX, TAX, TAX

The unemployment tax is paid per employee based on taxable employee wages.

For example, let's say the taxable wage base for each employee is \$7,000.

Employee X makes \$36,000 annually. The employer is responsible for paying unemployment compensation tax on the first \$7,000 of the \$36,000 earned in that year by Employee X.

Now, let's say that Employee X works for six months, is terminated, and Employee Y is hired to replace Employee X. Employee Y also earns \$36,000 annually. The employer is responsible for the unemployment tax on the first \$7,000 of Employee X & Employee Y, **DOUBLING** the amount of tax paid for that position in one year.

CROSS-TRAINING

Cross-training employees could significantly decrease the amount of turnover and unemployment compensation claims each year, thereby decreasing an employer's unemployment tax liability.

In the food and beverage industry, cross-training an employee to be a host/hostess and a waiter/waitress is beneficial for many reasons. Transition creates opportunity.

If there is a lack of hours for the waiter/waitress to work, this person can be offered hours in the host/hostess area if available. Keeping this in mind, if hours are not offered to an individual in another capacity, the employee can file a non-protestable unemployment claim and successfully receive benefits due to lack of work. If hours are offered and refused, benefits can be protested.

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DRUG TESTING



State unemployment agencies vary in how they rule on “drug testing violation” discharges. For purposes of simplification, there are five points that represent standards used to prove misconduct, and allow an employer the best possible chance of winning a case. These five points are:



REASONABLE COMPANY POLICY ON DRUG TESTING

An employer’s policy must be “reasonable”. Employees must be made aware of the company policy, either at the time of hire, or through some other communication. Preferably, it should be communicated in writing and should be signed by the employee.



REASONABLE SUSPICION

An employer must have “reasonable suspicion” of substance usage or impairment on the job to administer a drug test. Random drug testing is not advocated by state unemployment agencies, unless it is mandated by federal guidelines for a particular industry, or if an employee’s impaired condition is such that it might result in harm to the employee, co-workers, or the employer’s assets. The burden is on the employer to show good cause for administering a drug test.



CHAIN OF CUSTODY

Establishing “chain of custody” is essential in proving that the test sample was not contaminated or substituted during the process. Signed documentation or direct testimony from lab personnel is necessary to establish who handled the specimen, how it was handled, what kind of test was administered, and what the results of the test were.



RELIABLE TESTING PROCEDURES

Labs are often required to be accredited, licensed, or certified as assurance that the drug testing procedures are reliable. The procedure currently deemed most reliable is the Gas Chromatography/Mass Spectrometry (GC/MS) test.



MEDICAL REVIEW OFFICER’S REPORT (MRO)

The report on the test results may be available to the state unemployment agency at some point during the claim process. Some states require the MRO report at the initial claim level in order to disqualify a claimant from benefits.

For more information on the regulations and policies for drug testing in a particular state, you may contact your UC eXpress Claims Team or your Account Executive.

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**DISCHARGES AND QUILTS INVOLVING SEXUAL
HARASSMENT**

Title VII of the Civil Rights Act of 1964 does not specifically refer to sexual harassment. In 1980, the US Equal Employment Opportunity Commission [EEOC] declared in its guidelines that sexual harassment was a form of gender discrimination prohibited by Title VII.

Since your company can be legally responsible for sexual harassment if management personnel knew or should have known that it was being committed, great care should be taken to ensure that all employees know the company's policies.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors (usually tied to career advancement or benefits) as well as more subliminal acts, e.g., offensive jokes, commenting on physical appearance. Harassment can also come from company clients and vendors. Almost all states have additional laws prohibiting sexual harassment in the workplace.

Suggestions:

- ⇒ Ensure that every employee is aware of your company policies.
- ⇒ Do not ignore inappropriate sexual humor, remarks or behavior by subordinates.
- ⇒ Do not permit the posting of cartoons or photographs that may be offensive.
- ⇒ Early and active intervention may prevent a small problem from escalating into a major grievance or lawsuit.
- ⇒ In consultation with your Personnel Department, every allegation of sexual harassment should be completely investigated to determine whether or not the complaint has merit.
- ⇒ Warnings, suspension or transfers should be considered where appropriate.

☞ NOTE: In unemployment matters it is common to see justifiable discharges for egregious or repeated sexual harassment. It is also common to see frivolous or false claims by former employees who quit because of alleged harassment. In both instances the standard of proof is high. Therefore, it is essential, depending on your corporate policies, to consult with your Personnel/Law Department. In the instance of an unemployment hearing, the employer will generally not prevail in justifying a discharge or defending against unjustified claims of harassment without firsthand witnesses.

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POOR PERFORMANCE OR MISCONDUCT?



Discharges for poor (or unsatisfactory) performance will not disqualify a claimant from unemployment benefits. Most states define poor performance as the inability to meet company standards. The employer must prove misconduct (deliberate or wilful violations of the employer's rules or standards) to disqualify a claimant from benefits. Confusion occurs when poor performance is erroneously used to explain all or most separations. Intentional violations of company rules or standards should usually be reported as misconduct.

Keep in mind the following:

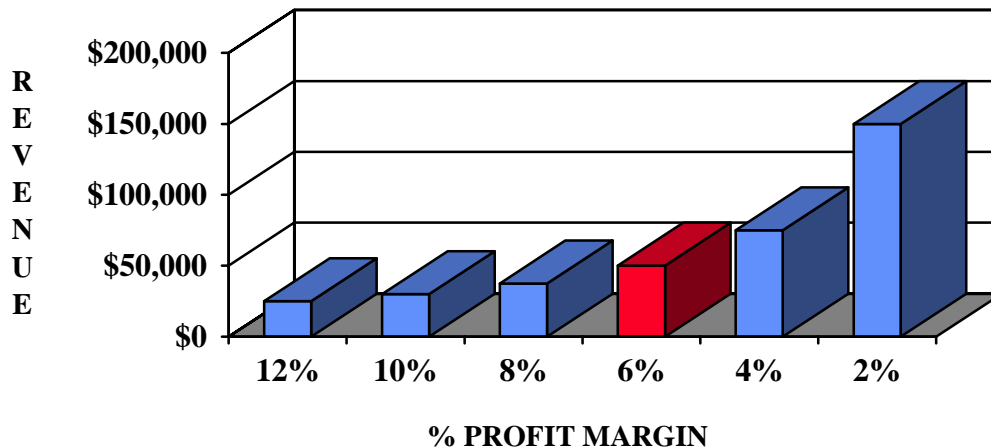
- ◆ Using the correct terminology is key when protesting an unemployment claim.
- ◆ Do not use the terms: poor performance, inability to meet standards, or inefficiency if discharged for a wilful or deliberate violation of rules/standards.
- ◆ Look to the cause of the "poor performance" in determining whether or not a discharge is for misconduct. For example, poor productivity caused by documented failure to follow instructions; excessive personal phone calls (after warnings); or lateness/absenteeism (within the employee's control) may be misconduct.
- ◆ Be descriptive when reporting a discharge to *UC eXpress*. Provide complete details with documentation.
- ◆ If a new employee does not meet company standards because of poor performance, termination should occur as quickly as possible. This may minimize company exposure in an unemployment claim.

If you have questions concerning these unemployment issues, contact your UC eXpress Claims Team.

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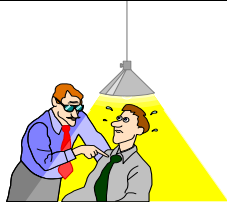
\$ EMPLOYERS PAY FOR UNEMPLOYMENT BENEFITS FROM THE PROFITS EARNED ON REVENUES THEY GENERATE

THE COST OF UNEMPLOYMENT



- According to the United States Department of Labor, the average unemployment claim costs an employer's account \$3,000.
- An employer must generate sufficient revenues, earning what would have been profits, to offset this cost.
- Based on the above chart, an employer with 6% profitability must earn \$50,000 to cover the amount paid for the average claim.
- Every unwarranted claim paid because of a late response or poor documentation diverts revenues from an employer's profits.
- Avoid unnecessary charges by following company claim procedures and adhering to corporate personnel policies.

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THEFT = MISCONDUCT

Theft equals misconduct because it illustrates a willful or deliberate act within the employee's control that violates company rules and regulations. Theft is dishonest and may be considered criminal. Your company policy/handbook should inform employees that an action of theft may lead to their immediate discharge, pending any investigation.

When assessing the case of "alleged" theft, employers must tread carefully. A wronged employee - either one who is innocent or one whose theft cannot be proven - may file charges against the employer with a number of agencies, including the police. An unprovable allegation which prompts an employee's termination can result in the employee filing a discrimination charge with the state or federal agency. Employers should also be mindful that branding an employee a "thief" could result in a civil action such as defamation.

Steps to insuring a proper investigation of theft:

1. Begin the investigation immediately upon notification of the theft (waiting too long allows the "trail" to become cold).
2. Work with your security department to ensure a joint effort (a same sex management person should be present during any interrogation by security of any employee).
3. Questioning of employee should either be taped or reduced to writing. Any written statement taken from the employee should be signed and dated.
4. Allow the employee in question to fully explain the circumstances, e.g., was given permission to take the item; has a receipt proving payment of the item.
5. Ascertain exact dollar amount of loss. If amount is insignificant (taking of a candy bar), or was a necessity at the time, (gloves for the cold), while you can certainly discharge the individual you will not likely prevail at the unemployment insurance hearing.

Things to bring with you for an unemployment insurance hearing on theft:

- Company rule showing theft as a terminable offense
- Signed acknowledgment by employee of company policy/handbook of rules
- Any prior warnings of a similar nature
- Witnesses to the theft including security investigators
- All evidence obtained during the investigation (sales receipts, video surveillance, statements from witnesses).

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HEARING CHECKLIST: A SURVIVAL GUIDE

A witness(es) with firsthand knowledge of facts and events leading to separation is essential to any successful hearing strategy. Similarly, copies of rules and documentary evidence supporting your position are important to a persuasive presentation of your case. The following checklist is intended to offer general suggestions on hearing preparation.

Hearing Notices

- ✓ **Contact your hearing coordinator at UC eXpress immediately upon receipt of a hearing notice.**
- ✓ **Advise your Human Resources/Law Department if you know of any pending legal claims involving, for example, sexual harassment or potential criminal charges.**
- ✓ **Fax a copy of the hearing notice, with your name and phone number, to UC eXpress. The UC eXpress hearing coordinator will contact you upon receipt of a hearing notice.**

Hearing Strategy

- ✓ **Discuss witness and documentation requirements with your UC eXpress hearing coordinator or assigned hearing representative.**
- ✓ **Inform the UC eXpress representative of any special circumstances that may effect the case.**

Basic Information for Every Hearing

Be prepared to testify from personal knowledge/records to the following information:

- | | | |
|----------------------|-------------------------|--------------|
| ☞ Job Title | ☞ Dates of Employment | ☞ Work Hours |
| ☞ General Job Duties | ☞ Reason For Separation | ☞ Pay Rate |

Witnesses

- ✓ **Person actually discharging claimant or accepting resignation. (An alternate, if present at the dismissal or quit, may appear as a witness.)**
- ✓ **Person(s) essential to proving employer's case. (Example: A witness to a theft or admission of theft. Also, corroborative witnesses can be very helpful.)**
- ✓ **Person(s) who can testify to issuance of warnings or applicable policies.**

Documentation

- ✓ **Three copies of all relevant documentation is necessary for in-person hearings. Discuss special procedures for telephone hearings with your coordinator or representative. (Documentation, unless related to the reason for separation, is generally unnecessary.)**
- ✓ **Rules and policies pertinent to a discharge for misconduct are a must. Also, produce proof of receipt.**
- ✓ **Written warnings are vital unless the severity of the offense requires immediate dismissal under policy.**
- ✓ **Records supporting a contention of misconduct or voluntary resignation. For example, time sheets should be produced for a lateness case. Similarly, produce a letter of resignation (if possible) in a quit case.**



UNEMPLOYMENT TIPS

USING PROBATIONARY PERIODS WISELY

The primary purpose of a probationary period at time of hire is, of course, to determine whether or not an employee has the appropriate skills, aptitude and work habits to be a productive employee. However, prudent use of the probationary period can also reduce or remove exposure to unwarranted unemployment benefit charges because of the way base periods are defined in most states.

Base Period

Almost all states limit charges to employers paying wages to a claimant during a one year or 12-month period preceding the initial claim for benefits. In most states this period is defined as the first four of the last five completed calendar quarters before a claim is filed:

BASE PERIOD					LAG PERIOD		
	First Qtr	Second Qtr	Third Qtr	Fourth Qtr	Lag Qtr	Current Qtr	

Several States remain as important exceptions since they define their base period in the aforementioned manner however charge the most recent employer for all benefits even if you paid no base period wages. Thus, as little as 30 days of employment could create exposure to liability.

Suggestions for Limiting Liability

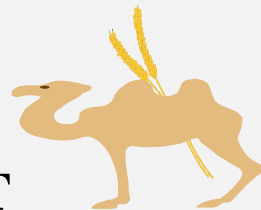
- Learn and understand your state definition of the base period and formula for charging benefits. Consult your UCeXpress Claims Team or Account Executive for advice.
- If a new hire is not working out, terminate his employment (if possible) before he can become a liability for unemployment compensation. Consult with your Personnel Department.
- Do not permit an unsatisfactory or unsuited new hire to “work out” his probationary period if there is no reason to expect improvement.
- Consider shortening probationary evaluation periods in those States with significant penalties for waiting too long (Last Employer Charging).
- Document rule or conduct violations constituting misconduct. Warn and terminate for cause where appropriate.
- Request letters of resignation from probationary employees who chose to quit.

NOTE ☞ Following the last two procedures may help you avoid liability in most states even if “lag period” employment eventually becomes “base period” employment. Also, it may avert charges in those States if your company is considered the “most recent” employer.

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MISCONDUCT: THE FINAL

INCIDENT



The verdict in most misconduct cases depends on the nature of the final incident prompting the decision to discharge an employee. If the final incident is trivial, isolated or beyond the claimant's control, a claimant may be found eligible for benefits regardless of prior warnings or record of violations.

“The Straw that Broke the Camel's Back”

While employers often have multiple reasons for terminating an employee, the state agency will focus on the final incident. For example, if an employee is warned for chronic latenesses within their control, do not terminate the employee following a last lateness caused by a snowstorm or verifiable accident.

Final Incident Test



Final incident within the employee's control.



Employee knew or should have known that his conduct could lead to discharge.



Record of prior warnings unless the final incident warrants immediate discharge, (e.g., theft or assaulting a co-worker).



Disciplinary action conforms to established personnel policy and practices. Consult your Personnel Department.



Reasonable proximity in time between the alleged incident and the date of discharge. (Late discovery may sometimes create a basis for exception.)



Action does not represent an isolated instance of poor judgment or carelessness.



Deliberate or wilful violation of rule or standard.



Violation is prejudicial to employer's interests.

Reminders



Although a prior history of warnings or infractions will clearly influence an initial determination or hearing decision by the state agency, the wrong final incident can cause an otherwise great case to fail.



CONSULT WITH YOUR PERSONNEL DEPARTMENT TO ENSURE COMPLIANCE WITH APPROVED POLICY/PROCEDURES BEFORE TERMINATION

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**DISCRIMINATION ISSUES
AND UNEMPLOYMENT CLAIMS/HEARINGS**

Often, a terminated employee will advise the unemployment insurance office that some form of discrimination on the job caused the unemployment; either through quitting or by discharge. The unemployment office will usually advise the claimant to file a complaint with the appropriate state or federal agency. Here are some of the categories of discrimination prohibited by federal law (Title VII of the Civil Rights Act of 1964):

Age - Age Discrimination in Employment Act
Citizenship - Immigration Reform and Control Act
Disability - Americans With Disabilities Act
Gender - Equal Pay Act
Pregnancy - Pregnancy Discrimination Act
Union Membership - National Labor Relations Act

Alleged violations of these laws can render concerns about unemployment insurance exposure comparatively minor. However, controlling unemployment costs and compliance with laws prohibiting discrimination are compatible for obvious reasons.

Advice:

- Follow your corporate personnel policies to ensure compliance with the Law.
- Consult with your Personnel/Law Department, as necessary, to address specific problems or questions.
- Inform your Personnel/Law Department immediately of complaints alleging discrimination or unlawful treatment.
- Investigate and review all complaints or possible evidence of policy violations.
- Alert your Personnel/Law Department to any unemployment claims or hearings where there may be actual or potential litigation.
- Inform your *UC eXpress* claim or hearing representative to any factors that may require special handling, including consultation with your Personnel/Law Department. You may also contact your *UC eXpress* Account Executive.

☞ *Reminder: You may call your UC eXpress Claims Team for additional advice.*